

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2009

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA

AND

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.Nos.24453, 37206 to 37208, 28434, 31619, 23942, 23072 and 29715/2004 and 26228/2005 and 3162/2006

1.S.Ponnusamy

2.K.Jayaraman

(writ petition dismissed as against the second
petitioner alone by order dated 8.8.2006)

3.M.Loganathan

(writ petition dismissed as against the third
petitioner alone by order dated 10.07.2007)

4.C.Selvaraj

5.V.Narayanasamy

6.A.K.Rajaduraivelpandian

7.D.Xavier

8.D.Ravikarathikayan

9.C.Rengaswamy Pandian ... Petitioners

Vs.

1.Government of Tamil Nadu,

Rep. By its Secretary,

Rural Development (CSS.I) Department,

Fort St. George, Chennai - 600 009.

2.The Director of Rural Development,

Pangal Building, Saidapet,

Chennai - 600 015.

3.The Chief Engineer,

Highways Department,

Chepauk, Chennai - 600 005.

4.D.Ramasamy

5.S.Muthusamy

6.v.Suresh

7.P.Selvaraj

8.S.Thanikachalam

9.S.Sadaippan

10.P.Sankarapandian

11.C.Sakthimurugan

12.E.Sivakumar

13.Madasamy Sundararaj ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for a Writ of mandamus

directing the 1st and 2nd respondents to absorb the services of the petitioners as Assistant Executive Engineers in the 1st respondent department in the original posts earmarked for the personnel from Highways Department.

Appearance :-

Mr.N.Muthukumarasamy, Sr. Counsel,
for Mr.Balan Haridas,
for petitioners in ... W.P.Nos.31619/2004, 37206 to 37208/2004, 26228/2005
24453/2004

Mrs.Nalini Chidambaram, Sr. Counsel,
for Ms.Gladys Daniel,
for petitioners in ... W.P.Nos.29715/2004, 23072/2004

Mr.R.Singaravelan
for petitioners in ... W.P.No.23942/2004, 3162/2004

Mr.P.S.Raman, Addl. Advocate General,
assisted by Mr.K.Elango, Special Govt. Pleader
for Government

Mrs.C.N.G.Ezhilarasi
for TNPSC.

Mrs.Geetha Thamaraiselvan,
for M/s.Sudha Ravi Associates

Mr.Srinath Sridevan,
for impleaded respondent in W.P.No.24453/2004

COMMON JUDGMENT

K.K.SASIDHARAN, J.

These Writ Petitions relate to the absorption of Engineers of Highways Department and Agricultural Engineering Department in the Rural Development Department of the Government of Tamil Nadu and the question involved is as to whether deputationists who continue to have their lien in their parent department are entitled for absorption in the Borrowing Department in the absence of a provision in the statutory rules framed under Article 309 of the Constitution of India.

2.Since the issue involved in all these Writ Petitions are similar in nature and as the challenge was very much in relation to the Government order in G.O.Ms.No.15 dated 25.01.2000, the Writ Petitions were taken together and are being disposed of by this common Judgment.

3.In order to appreciate the relief sought for by the respective petitioners, the prayer in each of the Writ Petitions are reproduced herein.

(i)W.P.No.26228/2005 :-

The relief sought for is to quash the ad hoc Rules issued by the Government of Tamil Nadu in G.O.Ms.No.15 dated 25.01.2000 insofar as it failed to make provision to absorb the petitioner and similarly placed Engineers of Highways Department and to direct the Government to absorb the petitioner in Rural Development Department as Assistant Executive Engineer.

(ii)W.P.No.24453/2004 :-

This Writ Petition is for a Writ of Mandamus directing the respondents 1 and 2 in the said Writ Petition to absorb the service of the Writ Petitioners as Assistant Executive Engineers in the original post earmarked for the personnel from Highways Department in Rural Development Department.

(iii)W.P.Nos.37206 to 37208/2004 :-

The petitioners have challenged the order dated 10.12.2002, terminating their deputation.

(iv)W.P.No.28434/2004 :-

Writ Petition No.28434/2004 was preferred against the order dated 27.04.2004 in O.A.No.1791/2004 on the file of the Tamil Nadu Administrative Tribunal, whereby the Tribunal directed the Government to consider the claim of the applicants in the said Original Application for being promoted to the post of Assistant Executive Engineer in Rural Development Engineering Wing.

(v)W.P.No.31619/2004 :-

In W.P.No.31619/2004, the petitioner has challenged the order dated 16.03.2004 in O.A.Nos.1068 to 1081/2004 on the file of the Tamil Nadu Administrative Tribunal whereby, the Tribunal directed consideration of the applicants in the said original applications for promotion on regular basis in terms of Rule 39 of the General Rules and to go ahead with the selection process by preparing the panel.

(vi)W.P.No.23942/2004 :-

In W.P.No.23942/2004, the challenge is to the order dated 12.08.2004, whereby, the Writ Petitioner was repatriated to the Highways Department.

(vii)W.P.No.3162/2005 :-

W.P.No.3162/2005 was filed by the very same petitioner in W.P.No.23942/2004, and the challenge is to the order dated 17.11.2005 in G.O.(D) No.572, to quash the same and to promote him to the post of Assistant Executive Engineer in the Rural Development Department with effect from the date of promotion given to his juniors.

(viii)W.P.No.23072/2004 :-

In W.P.No.23072/2004 filed by the Engineers of the Agricultural Engineering Department, their prayer was to issue a Writ of Mandamus to forbear the respondents from applying the qualification of Degree in Civil Engineering for the post of Assistant Engineer in Rural Development Department as per recruitment Rule in G.O.Ms.No.15 dated 25.01.2000 and consequently, to absorb the Engineers holding B.E. Degree in Agricultural Department as Assistant Engineers in Rural Development Department.

(ix)W.P.No.29715/2004 :-

In W.P.No.29715/2004, the prayer is to issue a Writ of Mandamus to direct the respondents to draw up a panel of persons holding the post of Assistant Engineers in Rural Development Department by including the petitioner, and fix the seniority in the post of Assistant Engineers after counting the service rendered by the petitioners in Agricultural Engineering Department and Rural Development Department, as per G.O.Ms.No.102 dated 25.05.1998.

4. There were two other Writ Petitions in W.P.Nos.24672/2004 and 24710/2004 preferred for identical reliefs and those Writ Petitions were dismissed as withdrawn on 14.03.2007 and 21.03.2007 respectively, as found from the records.

5.The background facts in all these Writ Petitions are more or less similar and the ultimate relief claimed is to absorb them in the Rural Development Department. Therefore, we are of the view that the facts as found in W.P.Nos.28434/2004 and 31619/2004 would project the contentions raised in all these Writ Petitions. The facts of the case as found in W.P.No.23942/2004 and W.P.No.3162/2005 would be dealt with separately.

W.P.Nos.28434 and 23072/2004 :-

Petitioner's contention :-

6.This Writ Petition is directed against the order dated 27.04.2004 in O.A.No.1791/2004 on the file of the Tamil Nadu Administrative Tribunal. The application in O.A.No.1791/2004 was preferred by the second Respondent to direct the third Respondent to promote him as Assistant Executive Engineer in the existing or future vacancy in the Rural Development Department as per the statutory Rules framed by the Government in G.O.Ms.No.15 dated 21.05.2000. The Writ Petitioner was not a party to the said application. The Original Application No.1791/2004 was taken up along with O.A.Nos.1792 to 1801/2004 and all the applications were disposed of by a common order by the Tribunal on 27.04.2004.

7.It was the case of the applicants in the original applications that they have been working as Assistant Engineers in the Engineering Wing of Rural Development Department. The Rural Development Department previously used to take Engineering staff on deputation from the Highways Department. In the year 1996, a separate Engineering Wing was formed in Rural Development Department itself and recruitment of Assistant Engineers were taken on direct recruitment basis. All the applicants before the Tribunal were selected by Tamil Nadu Public Service Commission and they have been appointed as Assistant Engineers in the Rural Development Department in the year 1998. Their appointments have been regularized and their probation was also declared and as such, they constituted regular cadre of Rural Development Engineering Wing. Since they have completed five years of service in the Rural Development Engineering Wing, they have become eligible for promotion to the next post of Assistant Executive Engineer. It was their grievance that instead of promoting them and filling up the post of Assistant Executive Engineer, Rural Development Department was trying to take Engineers from Highways Department and other Departments. Therefore, they have sought for appropriate directions to the Department to consider them for promotion to the post of Assistant Executive Engineer.

8.In the counter affidavit filed by the Rural Development Department before the Tribunal, it was made clear that they have no intention to fill up the post of Assistant Executive Engineer by receiving the officers on deputation again from the Highways Department. It was also indicated that persons who were working on deputation as Assistant Executive Engineers would be sent back to the parent Department after the completion of the period of deputation. Therefore, taking into consideration of all the contentions of the respondents, the Tribunal directed the Rural Development Department to consider the case of the applicants for promotion and posting them as Assistant Executive Engineers in the Rural Development Engineering Wing.

9.The said common order was challenged by the petitioner after taking leave.

10.The Writ Petitioner is working as Assistant Executive Engineer in the Rural Development Department and he originally joined the services of the Highways Department through the Tamil Nadu Public Service Commission [hereinafter referred to as 'the Service Commission'] and his date of appointment as Engineer was on 06.05.1981.

11.According to the petitioner, the Highways Department was constituted in the year 1946 and all the main roads hitherto maintained by the District Boards were transferred to the Government and

the same was under the control of the Highways Department. The Highways Department was headed by a Chief Engineer and it was placed under the administrative control of Public Works Department insofar as Government roads were concerned. Similarly, other roads coming under the District Boards were entrusted to the local administration Department. The Highways Department was entrusted with the technical control of all Government Roads and other works of erstwhile District Boards, presently known as Panchayat Unions. Divisional Engineers were directed to continue as District Engineers and they were performing all the functions as District Engineers and they were made responsible for the District Roads as far as the District Board Works were concerned. Assistant Engineers and Supervisors under the control of Divisional Engineers were directed to work in relation to Government Roads and all District Board works within their jurisdiction.

12. Subsequently, the Government in exercise of the powers conferred u/s 8 of the Madras District Municipalities and Local Boards (Amendment) Act, 1946, directed that the Highways Department will function with effect from 01.02.1947 and during the year 1950, Special Rules to Madras Highways Engineering Services and Madras Highways Engineering Subordinate Services Rules were framed and all the Engineers of the erstwhile District Boards were transferred to the Highways Department.

13. In the year 1958, Madras Panchayat Act was enacted and as per the provisions of the said Act, Community Development Block was created for National Extension Service and the District Boards were superseded by the Panchayat Development Block. Properties and works vested with the District Boards were transferred to the Panchayat Union Council.

14. The Government as per G.O.Ms.No.851 Rural Development and Local Administration Department dated 09.05.1960 directed the Highways Department to carry out the works brought under the Panchayat Unions and the technical supervision of all rural works were entrusted to a single self contained Engineering organization and the staffs in-charge of various schemes under the Panchayat Union were integrated with the staff of Highways Department. Consequently, the Highways Department was reorganized as Highways and Rural Works Department and the same was placed under the control of Chief Engineer and he was designated as Chief Engineer [Highways and Rural Works]. The petitioner along with others were posted to undertake Rural Development work under the Panchayat Union.

14. The Engineering staff working in the Rural Development Department were taken only from the Highways and Rural Works Department. While so, the Government decided to create the post of Engineers for the Rural Development Department for the purpose of executing works in Panchayat Unions. Accordingly, the third Respondent issued G.O.Ms.No.263 dated 27.12.1996 and created 384 additional posts of Assistant Engineers, 15 additional posts of Assistant Executive Engineers, 28 additional post of Executive Engineers and one Superintending Engineer with the powers of Chief Engineer. This was followed by another Government Order in G.O.Ms. No.102 Rural Development Department dated 25.05.1998 which contains directions in respect of the old posts manned by the staff of Highways Department. As per the said Government Order, the technical post in Rural Development Department was categorized into "New posts" and "Original posts". The third Respondent in the said G.O.Ms.No.102 ordered that the Chief Engineers (H&RW) would stop posting of personnel directly to the original 53 post of Assistant Executive Engineer (RD), 384 posts of Block Engineers, 768 posts of Overseers, 53 posts of Junior Engineers/Assistant Engineers and 53 posts of Junior Draughtsmen and all the post of Road Inspectors. It was also provided that the "original" 53 posts of Assistant Executive Engineer (Rural Department) and other posts as indicated above would be earmarked for personnel from Highways Department and their services would be permanently absorbed.

15.Subsequently, option was sought for from the petitioner and other similarly situated employees for absorption in the Rural Development Department and accordingly, the petitioner and other employees have exercised their option to be absorbed in the service of the Rural Development Department. This fact was recorded in the counter affidavit filed by the third Respondent in W.P.No.6513/1998 wherein it was specifically stated that there would be no reversion of Engineers in the Highways Department and willing technical staff of Highways Department would be absorbed in Rural Development Department.

16.In pursuance of G.O.No.263 dated 27.12.1996, the Director of Rural Development directly recruited Assistant Engineers and they were recruited in the newly created post and those Engineers were all juniors to the petitioner, and the second Respondent, applicant in O.A.No.1791/2004, was also far junior to him.

17.Even though the petitioner submitted his option for being absorbed in the fourth Respondent Department, no orders have been passed. In the year 2000, about 758 overseers and 650 Road Inspectors belonging to the Highways Department and working in the Rural Development Department were absorbed in the Engineering Wing of the Rural Development Department after taking their option.

18.It was the further contention of the petitioner that after the issuance of G.O.No.102 dated 25.05.1998, the entire control over posting and the manner of execution of work were all exercised only by the Director of Rural Development Department as well as by the concerned Collectors and the petitioner has been working under them and as such, he was impliedly absorbed in the Rural Development Department. The second Respondent has projected an incorrect picture before the Tribunal as if the Writ Petitioner and others have entered the service of the Rural Development Department only during the year 2003. The second Respondent has deliberately suppressed the fact that the petitioners and persons like him have been working in the Rural Development Department for more than a decade and that their claim for regularization was pending. According to the petitioner, the second Respondent has just completed the qualifying service and he was not having the length of experience and service in the Rural Development Department compared to the petitioner and as such, he was aggrieved by the direction of the Tribunal to consider the second Respondent and other applicants for promotion as Assistant Executive Engineer in the Rural Development Department.

W.P.No.31619/2004 :-

19.This Writ Petition is directed against the common order dated 16.03.2004 in O.A.Nos.1068 to 1081 of 2004, whereby, the Tribunal directed the Rural Development Department to consider and grant promotion to the Panchayat Union Engineers working in various Panchayat Union in the State of Tamil Nadu as Assistant Executive Engineer in the existing or future vacancies in the Rural Development Department in accordance with the statutory Rules framed in G.O.Ms.No.15 Rural Development Department dated 25.01.2000.

20.The second Respondent filed the original application in O.A.No.1068/2004 before the Tribunal and it was his contention that he was recruited by the Service Commission and he was appointed as Assistant Engineer in Rural Development Department as per Government Order dated 30.11.1998 subject to the out come of O.A.No.8813/1997. The second Respondent joined as Assistant Engineer in the Rural Development Department in December, 1998. It was his case before the Tribunal that ad hoc Rules for the post of Superintending Engineer, Executive Engineer, Assistant Executive Engineer and Assistant Engineer in the Rural Development Department were framed and notified by the Government as per G.O.Ms.No.15 Rural Development Department dated 25.01.2000 and the said Rule was given retrospective effect from 25.05.1998, the date on which separate Rural Development

Department Engineering Wing was formed. As provided by the ad hoc Rules governing the post of Assistant Executive Engineer, the second Respondent possessed the degree in Civil Engineering and he has also worked as Assistant Engineer in Rural Development Department for a period exceeding five years and as such, he was fully qualified for promotion as Assistant Executive Engineer.

21. O.A.No.8813/1997 preferred by the employees possessing only Agricultural Engineering Degree, for promotion as Assistant Executive Engineer in the Rural Development Department was dismissed by the Tribunal as per order dated 07.11.2003. In view of the dismissal of the said Original Application, Rural Development Department was bound to consider the case of the petitioner and other employees who have satisfied the requirements for promotion to the post of Assistant Executive Engineer as per G.O.Ms.No.102 dated 25.05.1998. In the said circumstances, the petitioner has prayed for a direction to the Tribunal to promote him in the post of Assistant Executive Engineer.

22.The Tamil Nadu Administrative Tribunal as per order dated 16.03.2004 directed the Government and the Rural Development Department to consider the grant of promotion to the petitioner after preparing the panel. The said order is the subject matter of this Writ Petition.

23.The contention of the petitioner is similar as found in W.P.No.28434/2004 and his prayer is to set aside the Order of the Tribunal and to promote him as Assistant Executive Engineer by taking into consideration of his service in the Rural Development Department in the original post as categorized in G.O.No.102 dated 25.05.1998.

Contention of the Government :-

24.In the counter affidavit filed on behalf of the Rural Development Department, the claim of the Writ Petitioners for absorption in the Rural Development Department de hors G.O.Ms.No.15 dated 25.01.2000 was disputed.

25.It was the case of the Department that consequent to the 73rd amendment to the Constitution of India, the Tamil Nadu Panchayats Act, 1994 was enacted and the said Act replaced the Tamil Nadu Panchayats Act, 1958. Due to increase in the number of schemes to be implemented, worth about Rs.15,000 crores every year, the Government took steps to create a separate Engineering Wing for the Rural Development Department. This was mainly on account of the fact that the District Engineer, Superintending Engineer and Chief Engineer of Highways and Rural Works Department failed to bestow their attention to the works of the Rural Development Department works on priority basis and they were mainly concerned with works in the Highways Department. It was also felt that the responsibility of achieving target and the authority for discipline and control of Engineers should be vested with the Director of Rural Development and Collectors and a decision was also taken to create additional technical posts on account of the large volume of works.

26.The Government as per G.O.Ms.No.263 Rural Development Department dated 27.12.1996 ordered for creation of the Engineering Wing headed by the Superintending Engineer (Rural Development) (with the power of the Chief Engineer in other departments) in the Directorate of Rural Department under the control of the Director of Rural Department. The Government have also ordered to create additional technical posts viz., 400 posts of Assistant Engineers in the Rural Development Department, 28 posts of Senior Draughting Officers, 71 posts of Junior Draughting Officers for the Engineering Wing of the Rural Development Department. Consequently, it was decided to take technical personnel on deputation basis from other departments like Highways and Rural Works Department, Public Works Department, Agricultural Engineering Department, Tamil Nadu Water Supply and Drainage Board and other allied technical department as temporary measure since promotion and direct recruitment would be a time consuming process.

27.The Government issued G.O.Ms.No.102 RD(E.IV) Department dated 25.05.1998 and the said order provided for placement of the existing staff of Highways Department on transfer of service to Rural Development Department at the disposal of the Director of Rural Development/Collector.

28.The 53 posts of Assistant Executive Engineers in 53 NREP Sub-Division manned by Highways Department staff before issue of Government Order was termed as "Original posts" and those 53 post were earmarked for personnel from Highways Department to avert reversion within the Highways Department. In para IV of the Government Order, instructions were issued to the Director of Rural Development to explore the possibility and report to the Government of permanently absorbing Assistant Engineers from other technical Departments giving them 1:1 weightage for service already put in by them in their respective departments and this would enable Rural Development Department to have officers of varying seniority. Pursuant to the said decision, options were sought for from the Assistant Engineers of various Departments and action was taken in Rural Development Department. With respect to the Assistant Executive Engineers, options were sought for and the Engineers have exercised their option through the Collector directly without the concurrence of their parent department. Since those options were not sent through their parent department, the options so received were referred to the parent department for remarks as per communication dated 09.09.2004.

29.Even though the Assistant Executive Engineers of other Departments were working in the Rural Development Department, their service was monitored by their parent Department and only transfer and posting within the Department was done by the Rural Development Department. The employees who were drawn from the Highways Department and other Departments were having their lien with their parent Departments and as and when they were promoted as Executive Engineers, they used to be relieved from the Rural Development Department.

30.Subsequently, the Government issued G.O.Ms.No.15 RD (E1) dated 25.01.2000 and the said Rule was in regard to Superintending Engineer / Executive Engineer / Assistant Executive Engineer and Assistant Engineer in Rural Development Department and there was no provision in the said recruitment Rule to absorb the Assistant Executive Engineers of other Departments in Rural Development Department. As per the Recruitment Rules framed under Article 309 of the Constitution of India, Assistant Engineer (RD), recruited directly and Junior Engineers/ Senior Draughting Officers alone are eligible for consideration for promotion to the post of Assistant Executive Engineer (RD) by drawing the panel in the ratio of 6:2:1.

31.It was also contended that the applicants joined the Rural Development Department only after the formation of Rural Development Engineering Wing on 01.06.1998 and as none of the Assistant Executive Engineers were in the service in any of the NREP Sub Division hitherto under the control of Highways Department, they cannot claim any right for permanent absorption and they were only on deputation terms in Rural Development Department.

32.With respect to the undertaking given in W.P.No.6153/1996, it was the contention of the Government that the said undertaking was only a temporary measure based on G.O.Ms.No.102 dated 25.05.1998 and in view of the Recruitment Rules framed by the Government in G.O.Ms.No.15 dated 25.01.2000, no relief could be claimed by the erstwhile Engineers of the Highways Department for permanent absorption in the Rural Development Department.

33.First batch of Assistant Engineers (RD) recruited in the year 1998 were eligible for promotion to the post of Assistant Executive Engineer (RD) as they have already completed five years of qualifying service in the feeder category, as provided under the Recruitment Rule, and it was only to grant promotion to the direct recruits in the Rural Development Department that the persons drawn from

other technical department including the Highways were permitted to continue. The services of the Assistant Executive Engineers in the Rural Development Department drawn from other services have to be taken only as a transfer of service and they are not eligible for absorption in the absence of necessary prescription in the Recruitment Rules.

34.The order of the Government in G.O.Ms.No.102 RD (EIV) Dept. dated 25.05.1998 was explained by the Government as the one issued for exploring the possibilities for getting experienced hands and the same in no way permit those employees to claim absorption in the rural development Department. Claim of seniority on par with the Assistant Engineers directly recruited through the Service Commission was also disputed by the Rural Development Department, as according to the Department, the Assistant Engineers directly recruited were governed by the service Rules framed in respect of the employees of the Rural Development Department. In the said factual premises, respondents have prayed for dismissal of the Writ Petitions.

35.The private respondents in the respective Writ Petitions who were the applicants in the original applications before the Tribunal have also filed their counter affidavit disputing the claim of the petitioners.

W.P.No.23942/2004 and 3162/2006 :-

36.These two Writ Petitions were preferred by an Assistant Engineer in the service of the Rural Works Department, recruited originally in the Highways and Rural Works Department in the year 1981.

W.P.No.23942/2004 :-

37.The petitioner joined the service as overseer in the Highways and Rural Works Department on 20.07.1981. He was appointed as Assistant Engineer on 09.02.1998 in the composite Highways and Rural Works Department and he was posted only in the Panchayat Union as Assistant Engineer subsequent to his appointment. Subsequent to G.O.Ms.No.102 dated 25.05.1998, option was taken from the employees with regard to their continuance in the Highways / Rural Works Department and the petitioner has given his option to serve in the Rural Works Department and on the basis of the said option, the Director has passed orders on 16.03.1999 absorbing him and other Panchayat Union Engineers in Rural Works Department itself. However, within a period of four months, the said Order was cancelled as per order dated 02.07.1999 on the ground that the Government alone was entitled to take a decision on absorption and the Director was incompetent to take such decisions. However, even after the order dated 02.07.1999, the petitioner was permitted to continue in the Rural Works Department and another option was sought from the petitioner and other employees on 26.09.2002 and again, the petitioner opted for the service in the Rural Development Department. However, no orders have been passed by the Government on the basis of the said option.

38.While so, all of a sudden, the District Collector as per order dated 12.08.2004, transferred the petitioner from the Rural Works Department to the Highways Department even though the option was still pending with the Government. Therefore, challenging the said order dated 12.08.2004, the petitioner has filed the Writ Petition with a consequential direction to absorb him in the Rural Works Department.

W.P.No.3162/2006 :-

39.This Writ Petition is directed against the order dated 17.11.2005, whereby, the Government rejected the claim of the petitioner to promote him to the post of Assistant Executive Engineer in Rural Development Department with effect from the date of promotion given to his juniors.

40.The claim of the petitioner was considered by the Government in accordance with the direction

given by the learned Judge of this Court as per order dated 30.11.2005 in W.P.No.3965/2005.

41. According to the petitioner, his claim for promotion as Assistant Executive Engineer in Rural Development Department was rejected on the basis of recruitment Rule in G.O.Ms.No.15 dated 25.01.2000. According to him, he had fully satisfied the eligibility criteria as prescribed in G.O.Ms.No.15. According to the petitioner, since he was sent to the Rural Development Department after his appointment on 22.07.1981 and as he continued to serve in the Rural Development Department, he has to be considered as an employee of the Rural Development Department for the purpose of promotion and as such, the order of the Government was not justified. The petitioner therefore, seeks to quash the said order and to promote him to the post of Assistant Executive Engineer in the Rural Development Department.

W.P.No.23072/2004 :-

42. This Writ Petition is at the instance of the Engineers of the agricultural Engineering Department as they are aggrieved by Rule 5(b)(a) of the recruitment Rule in G.O.Ms.No.15 dated 25.12.2000.

43. The petitioners were originally recruited to the Tamil Nadu Agricultural Department and their services were placed at the disposal of the Highways and Rural Works Department. Subsequently, their services were placed at the disposal of the Rural Development Department in accordance with the order in G.O.Ms.No.1306 dated 26.05.1981 on the file of the Chief Engineer, Agricultural Department. The petitioners hold B.E. Degree in Agricultural Engineering. While the petitioners were working in the Rural Development Department, they have also given their option for permanent absorption in the Rural Development Department and the said option was routed through the respective Collectors in the year 2000. However, the option was rejected by the Director of Rural Department on account of the delay in exercising the option. There were also original proceedings before the Administrative Tribunal and in O.A.No.8813/1997, the Tribunal rejected the claim of the Agricultural Engineers as per order dated 07.11.2003 by holding that only Civil Engineers could be appointed as Engineers in Rural Development Department. The said order was challenged in W.P.No.17934/2004 and during the pendency of the Writ Petition, the Government notified the recruitment Rule in G.O.No.15 dated 25.01.2000 prescribing the qualification for appointment for the post of Assistant Executive Engineer in Rural Development Department and in view of the prescription of qualification as found mentioned in Rule 5(b)(a) of Recruitment Rule, the petitioners sought withdrawal of the Writ Petition with liberty to challenge the impugned Rule and accordingly, the present Writ Petition was preferred with a prayer to forbear the respondents from applying the qualification of degree in Civil Engineering from a recognized University for the post of Assistant Engineer in the Rural Development Department as per Rule 5 (b)(a) of G.O.Ms.No.15 dated 25.01.2000 to the petitioners who are holding B.E. Degree in Agricultural Engineering and who are already working in Rural Development Department with an additional prayer to absorb them permanently in the Rural Development Department as per the option exercised by them in pursuance of G.O.Ms.No.152 dated 25.05.1993.

Submissions of the petitioners :-

44. Thiru.R.Muthukumarasami, learned Senior Counsel appearing for the petitioners in W.P.No.24453/2004, 26228/2005, 37206 to 37208/2004, 28434/2004 and 31619/2004 contended that the petitioners in the respective Writ Petitions were continuously working in the Rural Development Department and they have spent major part of their career by taking up the Panchayat Union Works and as such, they were fully qualified for absorption in the Rural Development Department. It was contended that after the issue of G.O.Ms.No.263 dated 27.12.1996, creating additional post for Panchayat Union Works, the Government issued G.O.Ms.No.102 RD Department dated 25.05.1998 issuing certain directions in respect of the old posts manned by the staff of Highways Department.

45. When G.O.Ms.No.263 dated 27.12.1996 was issued creating additional posts for Panchayat Union Works, the Association of Highways Engineering had filed Original Application before the Tamil Nadu Administrative Tribunal challenging the said Government Order and the dismissal of the original application was challenged by the Association in W.P.No.6513 of 1998. The main contention in the said Writ Petition was pertaining to the creation of post by means of executive instructions, in the light of the statutory Rules framed under Article 309 of the Constitution of India. In the counter affidavit, the Government gave an undertaking that willing technical staff of the Highways Department would be absorbed in the Rural Development Department. The said undertaking was given only after the issuance of the Recruitment Rules in G.O.Ms.No.15 Rural Development Department dated 25.01.2000 and the said undertaking has to be read along with the Recruitment Rules, which would make the position clear that there was no prohibition for absorbing the Engineers of the Highways Department, who were rendering service in the Rural Development Department. According to the learned Senior Counsel, the Writ Petition was dismissed by the Division Bench based on the said undertaking given by the Government and as such, it was not permissible for the respondents to contend for the position that as per the recruitment Rule in G.O.Ms.No.15, the petitioners are not eligible for absorption in the Rural Development Department.

46. The learned Senior Counsel further contended that the Government also absorbed the Road Inspectors/Assistant Draftsmen who were governed by Clause III of G.O.Ms.No.102 and the petitioners were denied the said benefit and as such, action of the Government was discriminatory and it violated Article 14 of the Constitution of India. The directly recruited Assistant Engineers who are new incumbents appointed in the additional post governed by ad hoc Rules cannot have precedent over the petitioners who have rendered more number of service in Panchayat Union works and they are far senior to them and as such, the petitioners are entitled for absorption in the Rural Development Department with effect from the year 1996. In view of the background of the Highways and Rural Development Department and the fact that they were part of the Panchayat Union works, the Government is obliged in law to act on the basis of the option given by the petitioners in terms of G.O.102.

47. According to the learned Senior Counsel, the recruitment Rule in G.O.Ms.No.15 dated 25.01.2000 does not govern the original post as the Government order itself makes it clear that it only covers the additional posts created under G.O.Ms.No.263 and as such, on coming into force of ad hoc Rule, G.O.Ms.No.102 does not get obliterated but it only strengthens the case of originally absorbed personnel in the Rural Development Department having regard to the fact that they belong to the composite Engineering services. Merely because the lien was with the Highways and Rural Works Department, petitioners cannot be denied the benefit of absorption inasmuch as only on such absorption, the lien could be put to an end.

48. The learned Senior Counsel also submitted that the Judgment of the Division Bench in W.P.No.19401/2004 and connected Writ Petitions would never stand in the way of consideration of the case of the petitioners for absorption, as the petitioners in those Writ Petitions were all TWAD Engineers who were admittedly deputationists and their mode of recruitment was also not through Service Commission and as such, they cannot be compared with the petitioners. The petitioners are all seniors working in the Rural Development Department for a considerable point of time and their absorption would in no way defeat the right of the newly recruited Assistant Engineers.

49. Thiru.R.Singaravelan, learned Counsel appearing for the petitioner in W.P.Nos.23942/2004 and 3162/2006 would submit thus:-

(i) The direct recruits entered the service of the Rural Development Department only in the year 1999 after the bifurcation of the department and as such, they cannot be allowed to contend that candidates like the Writ Petitioner who were working in the Department for more than five years

have no right at all to continue in Rural Development Department and to claim promotion as Assistant Executive Engineer. The Writ Petitioner has been working in the Rural Development Department since 20.07.1981 and all other candidates hitherto working in the departments like him have retired from service and as such, the Government has to consider his case as a special case also.

(ii) The junior employees who were recruited much after the recruitment of the petitioner were promoted to the post of Assistant Executive Engineer in Rural Development Department in the year 2003 itself and they have got further promotion in the post of Executive Engineer. But, however, the petitioner has been working in the post of Assistant Engineer for the past ten years and as such, there was no justification in denying him the chance of promotion by interpreting the recruitment Rule as applicable only to the employees, who were recruited after the constitution of the Rural Development Engineering Department. The order cancelling absorption on the ground of recruitment not through the Public Service Commission was not applicable to the Writ Petitioner as he was recruited through the Service Commission.

Submission of the Government :-

50. The learned Additional Advocate General appearing on behalf of the State contended that the petitioners are not entitled for absorption in the Rural Department Engineering Wing in view of the Recruitment Rules framed under Article 309 of the Constitution of India.

51. According to the learned Additional Advocate General, the petitioners are not entitled for the relief as prayed for by them and he would submit thus :-

(i) The contention of the Engineers of the Highways Department that the additional post sanctioned as per G.O.Ms.No.263 Rural Development Department dated 27.12.1996 should be filled up only from and among the Highways Department was rejected by the Tamil Nadu Administrative Tribunal in its order dated 12.11.1997 in O.A.No.253/1997 and the said order was upheld by the Division Bench of this Court as per Judgment dated 02.04.2002 in W.P.No.6513/1998 and as such, it is not open to the petitioners, who are also Engineers of the Tamil Nadu Highways Department, to agitate the said issue once again.

(ii) Claim of the petitioners that 53 posts of Assistant Executive Engineers and 384 post of Assistant Engineers in the Rural Development Department were permanently earmarked for Highways Department is factually wrong for the reason that those posts were not earmarked for permanent absorption and that all future vacancies were to be filled up only by the Rural Development Department. Similarly, the Government order in G.O.Ms.No.102 dated 24.05.1998 was superseded by the ad hoc service Rules framed in G.O.Ms.No.15 dated 25.01.2000 which took retrospective effect from the date of G.O.Ms.No.102 i.e. from 25.04.1998. All postings done pending the framing of service rules were purely temporary and do not confer any right on anyone as it is the service Rules that determine as to how personnel could be recruited or absorbed permanently.

(iii) G.O.Ms.No.102 dated 24.05.1998 was issued only for the purpose of exploring the possibility and to report to the Government for permanently absorbing Assistant Engineers from Technical Departments by giving them 1:1 weightage for service already put in by them in their respective departments. This direction was merely to explore the possibility and it was not a directive or a promise to absorb the Assistant Engineers from other departments. However, while framing the ad hoc service Rules in G.O.Ms.No.15 dated 25.01.2000, the idea of permanent absorption of deputationists from other departments was discarded and no provision was made for the same. This is also evident from the fact that the Rural Development Department itself began to recruit its Assistant Engineers through Service Commission since 1998.

(iv) The challenge to the recruitment Rule in G.O.Ms.No.15 was negated by the Division Bench in the earlier batch of Writ Petitions in W.P.No.19401/2004 to 19410 and the findings in the said Writ Petition is clearly applicable to the case on hand. The entire issue now raised by the petitioners were answered by the Division Bench in the earlier batch of Writ Petitions and as such, the same cannot

be permitted to be re-agitated again.

(v) When the Division Bench categorically held that the ad hoc service Rules framed in G.O.Ms.No.15 dated 25.01.2000 is constitutionally valid and made in accordance with law, it is not permissible for a Coordinate Bench to consider the validity of the very same Recruitment Rules once again at the instance of another set of deputationists working in the Rural Development Department.

Relevant Government Orders :-

G.O.Ms.(RD) No.263 dated 27.12.1996 :-

51. The Government have considered the letter sent by the Director of Rural Development on 31.07.96 and 12.09.1996, wherein it was indicated that technical supervision of works related to Rural Development Department was inadequate as currently there was only one post of Union Engineer in the Panchayat Union. The development works taken up per Panchayat Union exceeded Rs.1.5 crores and as such, the same requires close technical monitoring and supervision and control to ensure timely execution of works as well as to ensure quality. Therefore, the Director of Rural Development requested the Government for the strengthening of the technical wing in Rural Development by providing a full fledged office of Divisional Engineer/Executive Engineer in each district, a sub division headed by Assistant Divisional Engineer/Assistant Executive Engineer in each division and at least two Union Engineers for each block. It was his further request for creation of a technical wing at the Directorate of Rural Development, Chennai headed by a Superintending Engineer.

52. The said proposal submitted by the Director of Rural Development was considered by the Staff Committee presided over by the Chief Secretary and in accordance with the recommendation of the Staff Committee, the Government decided to create one post of Union Engineer (Assistant Engineer) for each block; 15 technical sub-division in those development divisions where these sub divisions did not exist; a technical division headed by Divisional Engineer/ Executive Engineer in each district; and a technical wing headed by Superintending Engineer in the Directorate of Rural Development. Accordingly, at the Panchayat Union Level, 384 posts of additional Union Engineer in the rank of Assistant Engineer at the rate of one additional Union Engineer per Panchayat Union; and at the Divisional level, 15 sub-divisions at the rate of one sub-division to each of the development division which do not have technical staff were also created. The Government also decided to draw the staff for those posts from various departments like Highways and Rural works, Public Works Department, Agricultural Engineering, Tamil Nadu Water Supply and Drainage Board and other allied Technical departments.

G.O.Ms.No.102 R.D.Department dated 25.05.1998:-

53. Even though as per G.O.Ms.No.263 Rural Development dated 27.12.1996, the Government created 384 additional posts of Union Engineers, 15 additional posts of Assistant Executive Engineers, 28 posts of Executive Engineers at the District level and one Superintending Engineer with the powers of the Chief Engineer for the smooth functioning of the Rural Development Department, it was found that the required number of Engineers could not be filled from the Departments of Highways and Rural works, Public Works Department, Agricultural Engineering, Tamil Nadu Water Supply and Drainage Board and other allied technical Departments and as a result, the Rural Development Department was in need of personnel to man the technical side of the said department. Accordingly, the Government have decided to categorize the technical posts in the Rural Development Department as "New posts" and "Old posts". Post sanctioned as per G.O.Ms.No.263 Rural Development (CSS.I) Department dated 27.12.1996 were categorized as "new post" and those posts sanctioned prior to G.O.Ms.No.263 was classified as "Original Posts". Accordingly, the Government ordered that the posting and transfer of officers manning the "New posts" was vested in Collectors/Director of Rural Development/Government in Rural Development

Department and in respect of 'Original Posts' manned by personnel drawn from Highways Department, whose postings are done by the Divisional Engineers (Highways)/ Chief Engineer (Highways and Rural Works)/ Government in Highways Department.

54. In order to streamline the technical wing of the Rural Development Department, Government ordered that the posting of personnel directly to the "Original" 53 posts of Assistant Executive Engineer (RD), 384 posts of Block Engineers, 768 posts of Overseers, 53 posts of Junior Engineers/Assistant Engineers and 53 posts of Junior Draftsmen (one in each technical sub-division) and all the posts of Road Inspectors, should be stopped with immediate effect. The Chief Engineer (H&RW)/ Government in Highways Department was directed to place those personnel at the disposal of the Director of Rural Development / Collectors on transfer of service basis and the Director of Rural Development and Collectors were directed to discharge the powers of posting and transfers. It was also provided, for the purpose of avoiding reversion within the Highways Department, that the "Original" 53 posts of Assistant Executive Engineer (RD), 384 posts of Block Engineers, 768 posts of Overseers, 53 posts of Junior Engineers/Assistant Engineers and 53 posts of Junior Draftsmen would be earmarked for personnel from Highways Department but if the Department was not able to sponsor candidates within two months from the date of request made by the Director of Rural Development, then Rural Development Department would fill up those posts by drawing personnel from other departments. It was also provided that all future vacancies arising out of promotions or retirement or otherwise will be filled up only by Rural Development Department.

G.O.Ms.No.15 Rural Development (E1) Department dated 25.01.2000 :-

55. The Government as per G.O.Ms.No.15 dated 25.01.2000 framed ad hoc Rules for the post of Executive Engineer, Assistant Executive Engineer and Assistant Engineer in Rural Development Department under Article 309 of the Constitution of India. The Rules were given retrospective operation and it was deemed to have come into force on the 25th day of May, 1998, on which date, Government issued the order in G.O.Ms.No.102.

56. The recruitment Rules notified as per G.O.Ms.No.15 prescribed B.E. (Civil Engineering) as the qualification for Assistant Engineers and it provides for filling up of the post of Assistant Engineers by

(i) direct recruitment through TNPSC;

(ii) by direct recruitment by transfer from the category of overseers.

Appointment to the post of Assistant Executive Engineer was by promotion from the category of Assistant Engineers and by recruitment by transfer from the categories of Junior Engineers and Senior Draughting Officers in the ratio of 6:2:1. These Rules were given retrospective effect and for Assistant Engineers it was with effect from 26.09.1997 and in the case of Assistant Executive Engineers, it was from 25.05.1998.

Salient features of the Recruitment Rule in G.O.Ms.No.15 dated 25.01.2000 :-

57. It is found from the recruitment Rules that the said Rules were issued for regulating the appointment at various levels of technical wing in the Rural Development Department. The technical qualification of B.E. in Civil Engineering alone was prescribed as qualification and no other discipline of Engineering was prescribed as qualification for appointment to the post of Assistant Engineers. Insofar as the appointment to the post of Superintending Engineer is concerned, it shall be made by promotion in the Rural Development Department. Similarly, with regard to the post of Executive Engineer, it was provided that the same shall be by promotion from the post of Assistant Executive Engineer in the Rural Development Department. In the case of the Assistant Executive Engineer, appointment shall be by way of transfer from the category of Junior Engineer and Senior Draughting Officer and promotion from the category of Assistant Engineer in the Rural Development

Department. Other source of appointment was not provided in the Rules. Insofar as the post of Assistant Engineers are concerned, it shall be made by direct recruitment or recruitment by transfer from overseers in the Rural Development Department in the ratio of 1:1. Relaxation with regard to educational qualification and appointment from other sources are not found in the recruitment Rules.

58.Claim of Agricultural Engineering personnel were totally excluded in the recruitment Rule either for absorption or for promotion in the Rural Development Department. The basic qualification of B.E. in Civil Engineering alone was prescribed as the qualification and the Engineering qualification possessed by Agricultural Engineering Personnel were not prescribed as the qualification for appointment in the Rural Development Department.

Contention of the Tamil Nadu Highways Engineering Association in O.A.No.253/1997 :-

59.Subsequent to the issuance of G.O.Ms.No.263 RD Department, dated 27.12.1996, the Tamil Nadu Highways Engineering Association preferred an original application before the Tamil Nadu Administrative Tribunal in O.A.No.253/1997 and it was their contention that the additional post sanctioned as per G.O.Ms.No.263 dated 27.12.1996 should be filled up only from the Engineers of the Highways Department and the said plea was rejected by the Tribunal as per order dated 12.11.1997. The said Order was challenged in W.P.No.6513/1998 and the Writ Petition was dismissed by the Division Bench as per Judgment dated 02.04.2002.

Analysis :-

59.The petitioners are banking upon G.O.Ms.No.102 dated 25.05.1998 as well as the undertaking given in the earlier writ petition that there would be no reversion in Highways Department consequent to the bifurcation. According to them, they have got an accrued right for absorption in the Rural Development Department as the 53 original posts were clearly earmarked for the Assistant Executive Engineers of Highways Department. It is their further contention that there is no prohibition in the recruitment Rule for absorption of the petitioners and as such, there should be a harmonious construction of the Government Order in G.O.Ms.No.102 dated 25.05.1998 as well as Recruitment Rules framed under Article 309 of the Constitution of India in G.O.Ms.No.15 dated 25.01.2000.

60.The background facts for the issuance of the order in G.O.Ms.No.102 dated 25.05.1998 was clearly spelt out in the preamble to the said order. It was only on account of dearth of Engineers to fill up the post available in the Engineering wing of the Rural Development Department that the Government has classified the post as "New Post" and "Original Post". It was only those posts sanctioned as per G.O.Ms.No.263 dated 27.12.1996 were classified as new post and those posts which were sanctioned prior to the issuance of G.O.Ms.No.263 dated 27.12.1996 were classified as "Original posts". With a view to avert possible reversions in the Highways Department, it was provided that original 53 posts of Assistant Executive Engineers, 384 posts of Block Engineers, 768 post of Overseers, 53 posts of Junior Engineers/Assistant Engineers and 53 posts of Junior Draughtsman would be earmarked for personnel from Highways Department. However, the said prescription was not an absolute one as it further provided that in case the Highways Department was not in a position to sponsor candidates within two months from the date of such request made by the Director, Rural Development Department, it would be the prerogative of the Director, Rural Development Department to fill up the said post by bringing personnel from other departments. It was also provided that all future vacancies would be filled up only by the Rural Development Department.

61.The Director of Rural Development Department as per proceedings dated 17.03.1999 and 25.05.1999 absorbed 129 Assistant Engineers belonging to Agricultural Engineering Department,

Highways and Rural Works Department and TWAD and Tamil Nadu State Construction Corporation Limited, who were working in the post of Assistant Engineers/Additional Union Engineers in the Rural Development Department and who also opted for absorption in the Rural Development Department. Subsequently, it was found that the post of Block Engineers/Junior Engineers/Assistant Engineering post comes under the purview of the Service Commission and therefore, the competent authority to absorb them were only the Government. It was in the said circumstances, that the order of absorption was cancelled by the Director of Rural Development Department as per proceedings dated 02.07.1999. The said order has also become final as there was no challenge to the recall of the order of absorption.

62. Subsequently, statutory Rules were framed by the Government under Article 309 of the Constitution of India. There was no provision in the statutory Rules for absorption in the Rural Development Department of the erstwhile Engineers of Highways Department and Agricultural Engineering Department who were working on deputation or on transfer of post from other departments. The earlier orders were all executive directions without any statutory force and all those orders were superseded by the statutory Rules notified as per G.O.Ms.No.15 dated 25.01.2000. In fact, G.O.Ms.No.102 dated 25.05.1998 only directed the Rural Development Department to explore the possibility of absorbing the Assistant Engineers from other technical departments in the Rural Development Department by giving them 1:1 weightage for service already put up by them in their respective departments. This direction to explore the possibility of absorption cannot be termed to be a promise to absorb the Engineers in the Rural Development Department. In fact, a communication was addressed to the Rural Development Department by the Highways Department requiring repartition of the employees of the Highways Department to their parent department. The initial order of absorption was subsequently recalled by the Rural Development Department and there was no challenge to the said order. At any rate, no provision was made in the statutory Rules for absorption of employees like the petitioners in the service of the Rural Development Department. Similarly, there was no provision in the recruitment Rule for an alternative mode of appointment in respect of post covered by the Rules or for relaxation. The recruitment Rules framed by the government was one destined to govern the recruitment in the Engineering Wing of the Rural Development Department. When the Rule does not make provision for absorption of deputationists, no reliance could be placed on administrative instructions issued by the Government prior to the framing of the Recruitment Rules for an order of absorption.

63. The petitioners at no point of time severed their link with their parent department. They continued to be employees of the Highways Department or Agricultural Engineering Department and they were only the employees of the respective Departments, for all practical purposes. Their lien was only in the Highways Department in the case of Highways Engineers, and in the Agricultural Engineering Department, in the case of Engineers of the said department. These petitioners were considered as employees of the Highways Department/Agricultural Engineering Department at all point of time and for all practical purposes even though, they have been deputed to the Rural Development Department. Whenever there was promotion in the Highways Department, these petitioners have accepted such promotion.

64. The learned Additional Advocate General also brought to our notice that out of the nine employees of the Highways Department, who filed writ petitions claiming absorption in the Rural Development Department as Assistant Executive Engineers, four persons have been promoted subsequently as Divisional Engineers by the Highways Department and they have gone back to their parent Department consequent to the promotion. Another employee also got promotion as Divisional Engineer (Highways Department) and as such, five employees have withdrawn their claim for absorption in the Rural Development Department. In view of the subsequent Developments, now there are only four claims for absorption and those employees also continue to keep their lien in the

Highways Department. Therefore, the petitioners were not denied the chance of promotion in their parent Department on account of their deputation or transfer of service in the Rural Development Department.

Concept of Deputation :-

65. An employee on deputation to another service continues to hold his lien in his parent department. There should be provision in the Recruitment Rules of the borrowing department for the purpose of absorption of the deputationists in their service and in the absence of any such prescription, the deputationists are legally not entitled to claim absorption in the borrowing department. The process of absorption of a deputationist involves two departments and there should be concurrence of the lending Department for absorption of their employees in the borrowing department. Similarly, borrowing department should also be willing to absorb the deputationist in their service. However, provision in the recruitment Rule of the borrowing Department to fill up the post by absorption of a deputationist is a condition for consideration of such absorption. In the absence of any such provision in the recruitment Rules, it is not permissible for the deputationist to make a claim for absorption in the borrowing department. In the event of non-absorption of the deputationists in the borrowing department, they would be repatriated to their parent department after the expiry of the period of deputation. It is trite that the deputationist has no vested right to become a permanent employee against the wishes of the borrowing department.

Management of service - Government function :-

66. It is the prerogative of the Government to constitute the service, create post and prescribe qualification for appointment, making provision for deputation from other service and to lay down rules and regulations governing such deputation or transfer of service and matters incidental thereto. Similarly, it is within the exclusive jurisdiction of the Government to examine the working of the Rules and to modify the same from time to time in the interest of the administration. The administrative exigency requires the Government to study the administrative set up periodically and in case, the Government on account of administrative exigencies or difficulties in the working of the system, decides to make reforms in the system, it cannot be said that the Government is not entitled to initiate such steps. Amalgamation or bifurcation of various departments, formation of cadres etc. are always considered to be the function of the management. The power of creation includes the power to abolish also and as such, employees have no vested right to contend for the position that Rules that were prevailing at the time of their initial entry into service should be the same throughout their career. The Government is the best judge to consider the reforms necessary in the administrative set up either on a study of the working of the system or on the basis of the past experience. The Government has got the necessary expertise to carry out such reforms and unless vested rights are taken away, it is not possible for the employees to challenge such measures taken by the Government in the interest of public administration.

W.P.No.23072 & 29715/2004 :-

67. Writ Petitions preferred by the Engineers of the Agricultural Engineering Department to forbear the respondents from applying the qualification of degree in civil Engineering for the post of Assistant Executive Engineers in the Rural Development Department is clearly not maintainable in view of the qualification prescribed for appointment to the post of Assistant Engineers and Assistant Executive Engineers in the Rules framed under Article 309 of the Constitution of India. As per G.O.Ms.No.15 dated 25.01.2000, the only qualification for appointment to the post of Assistant Engineer is a degree in Civil Engineering and not even an equivalent qualification is made mentioned in the Rules. Admittedly, the petitioners in the above Writ Petitions are not Civil Engineers and as such, they are not entitled to be considered as Assistant Engineers in the Rural Development Department as per the existing rules. In the light of the educational qualification as prescribed by the Rules notified as per G.O.Ms.No.15 dated 25.01.2000, the petitioners are not

entitled for the relief as claimed by them in both these Writ Petitions. In fact, the very issue was raised earlier by the Engineers of the Agricultural Engineering Department in O.A.No.8813 of 1997 and their claim was negated by the Tribunal as per order dated 07.11.2003 and the said order has also become final. Therefore, the petitioners are not entitled to agitate the very same claim once again by reframing the relief.

68.While exercising the power of judicial review, it is not within the province of the Courts and Tribunals to consider each and every provisions of the recruitment Rule and to amend the same to suit the convenience of the parties. The recruitment Rules framed under article 309 of the Constitution of India is legislative in character and as such, the same cannot be interfered with lightly. When the employees lack the basic qualification prescribed under the relevant recruitment Rules, they are totally excluded from the zone of consideration.

W.P.Nos.23942/2004 and 3162/2006 :-

69.The petitioner challenges the order of repartition as well as the Government Order negating his claim for absorption in the Rural Development Department. The petitioner was one among the Engineers who have opted for absorption in the Rural Development Department and the option was accepted by the Director of Rural Development Department. However, the proceedings relating to absorption was subsequently cancelled by the Rural Development Department as the competent authority to undertake the process of absorption was none other than the Government. The said order of cancellation of absorption has also become final. The plea of absorption was turned down by the Government as per the impugned Order dated 17.11.2005 on two grounds viz., the absence of consent from his parent department for absorption as well as on account of subsequent framing of rules in G.O.Ms.No.15 dated 25.01.2000 which makes no provision for absorption of employees like the petitioner. The petitioner is in a better position on account of his continuous service in the erstwhile composite Department as well as in the Rural Development Department after its formation. But the fact remains that his parent department is only the Highways Department. That was the reason for his request for absorption in the Rural Development Department and necessary option was also given by him for such absorption. There was a change in circumstances on account of the framing of Recruitment Rules as notified in G.O.Ms.No.15 dated 25.01.2000. In fact, even in the earlier order of absorption, there was a clear stipulation that absorption was subject to the framing of ad hoc Rules. When the statutory Rules were framed, the entire matter was at large before the Government. But for the reasons best known to the Government, no provision was made in the statutory Rules for absorption of those Engineers who were working in the Rural Development Department, though belonging to the Highways Department. Therefore, necessarily, it has to be held that the administrative instructions were superseded by the statutory Rules. There is no question of harmonious construction of G.O.Ms.No.102 dated 25.05.1998 and the statutory Rules, as the Rules provide only for a particular pattern of appointment in the post of Engineers in the Rural Development Department. No other source of recruitment was provided and as such, it was an indication of foreclosing the claim made by the employees like the petitioner for absorption.

70.Moreover, it is not as if the Government was not in the know of things when they have framed the recruitment Rules for the Rural Development Department. The petitioner and other employees were already working in the Rural Development Department during the time of framing the statutory Rules. However, no provision was made in the Recruitment Rules for the absorption of the employees like the petitioner. Whether the petitioner is called as a deputationist or a transfer of service personnel, the fact remains that his parent Department is only the Highways Department. The finding in the earlier round of litigation clearly applies to the petitioner also. The order dated 17.11.2005 was not one made by the Rural Development Department but it was a Government decision wherein the Government on a consideration of the statutory Rules negated the plea of the petitioner for absorption. In the light of the statutory Rules, we are not in a position to accept the

contention of the petitioner for his induction in the Rural Development Department and the consequential plea of absorption. Therefore, we do not find any illegality in the decision of the District Collector to repatriate the petitioner to his parent department and the subsequent order passed by the Government dated 17.11.2005.

Decision of the Coordinate Bench :-

71.The learned Additional Advocate General appearing for the State submitted that the very same issue has been considered by the Division Bench of this Court in W.P.No.19401/2004 etc. batch and on a careful consideration of the statutory Rules, the Division Bench concluded that the deputationists were not entitled for absorption in the Rural Development Department. According to the learned Additional Advocate General, only difference in the present Writ Petition is that the petitioners are all employees of Highways Department and Agricultural Engineering Department and the said difference had nothing to do with the ultimate decision arrived at by the Division Bench. The learned Additional Advocate General further contended that the employees of the Tamil Nadu Water Supply and Drainage Board were also deputed to the Rural Development Department and their claim was negated by the Division Bench in the Judgment dated 29.01.2007 on the ground that subsequent to the framing of statutory Rules under Article 309 of the Constitution of India wherein no provision was made for absorption, the deputationists have no subsisting claim for absorption.

72.Thiru. R.Muthukumarasami, learned Senior Counsel appearing for the petitioners in W.P.No.24453/2004 and the related Writ Petitions preferred by the Highways Engineers and Mrs.Nalini Chidambaram, learned Senior Counsel appearing on behalf of the petitioners in W.P.No.23072 and 29712/2004 and Thiru. R.Singaravelan, the learned Counsel appearing on behalf of the petitioners in W.P.Nos.23942 and 3162/2006 contended that there is a basic difference between the deputationists from the Highways Department/ Agricultural Engineering Department and the deputationists who have come to the Rural Development Department from the Tamil Nadu Water and Drainage Board [hereinafter referred to as TWAD]. It was their contention that the Engineers of the TWAD were not appointed by the Service Commission and as such, they were not entitled to be absorbed in the Rural Development Department. But the same is not the case of the Engineers of the Highways Department as well as Agricultural Engineering Department as these Engineers were all appointed by the Service Commission.

73.Since the very same issue of absorption of the deputationists from the TWAD in Rural Development Department was the subject matter in W.P.No.19401/2004 etc. batch, we have gone through the Judgment of the Division Bench. The entire factual matrix involved in the matter in the light of the statutory Rules framed by the Government was considered by the Division Bench presided by His Lordship Mr.Justice P.Sathasivam, [as His Lordship then was], and in fact, the entire arguments now advanced by the petitioners were answered by the Division Bench in the said Judgment.

74.In the matter before the Division Bench, the Engineers of TWAD working in Rural Development Department on deputation prayed for issue of a Writ of Mandamus directing the Rural Development Department to absorb them as Assistant Executive Engineers in the Rural Development Department from the date of their appointment pursuant to G.O.Ms.No.102 dated 25.05.1998. Some of the petitioners sought to quash the order of the TWAD dated 27.12.2004 and made a prayer to give effect to the order of absorption issued by the Director of Rural Development Department made in his proceedings dated 17.03.1999. There was a further prayer to set aside the order of cancellation of absorption dated 02.07.1999, whereby, the earlier order of absorption was recalled by the Rural Development Department.

75.The prayer in W.P.No.35303/2006 was for a writ of declaration, declaring paragraph 2 of notification IV of G.O.Ms.No.15 R.D. (E1) Department, dated 25.01.2000 giving retrospective effect to the ad hoc Rules and to declare the non inclusion of deputationists from TWAD as one of the methods of appointment for recruitment to the post of Assistant Engineer in Rule 3 of the ad hoc Rules in G.O.Ms.No.15 as void. They have also prayed for a consequential direction to include the deputationists from TWAD as one of the method of appointment in Rule 3 and absorb them in the Rural Development Department with all consequential benefits.

76.In W.P. No.31510 of 2004 preferred by The Tamil Nadu Rural Development Engineers' Association, the prayer was to issue a Writ of Mandamus, directing the Rural Development Department to repatriate the Engineers of the Highways Department as well as other Departments who were on deputation to their respective parent Departments.

77.Before the Division Bench, the petitioners invoked the doctrine of legitimate expectation for absorption in the Rural Development Department. They have contended that the statutory Rules framed by the Government, excluding the deputationists from the TWAD Board as one of the method of appointment, was arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India and the impugned Rules operate viciously against the deputationists who were appointed long before the notification of Rules. They have further contended that the impugned statutory Rules by giving retrospective effect affected their acquired right to continue in the Rural Development Department and as such, it was arbitrary and illegal and denial of absorption in the Rural Development Department under the guise of statutory Rules affected their future prospects. All these contentions were dealt with extensively by the Division Bench in the light of the settled legal position.

Decision of the Division Bench on particular issues :

(i)Claim of legitimate expectation:-

78.The counsel appearing for the deputationists submitted before the Division Bench that the petitioners have joined the Rural Development Department on deputation from TWAD and that their request for regularisation in the Rural Development Department was accepted and orders were issued by the Director of Rural Development Department, with the consent of the TWAD and as such, the respondents were not justified in reversing their decision. According to the learned Counsel, on the principle 'Legitimate Expectation', the respondents ought to have let the petitioners to continue in the Rural Development Department along with other Engineers and the Rural Development Department was estopped from repatriating the deputationists to their parent Department.

79.The Division Bench turned down the plea of legitimate expectation on the ground that deputationists were aware that they were taken only on deputation basis and their rights were only in the TWAD and not with the Rural Development Department. The Bench observed that the Engineers from the TWAD do not have the legal right to claim absorption in the Rural Development Department when the Government and the Board have taken a decision not to entertain absorption. The Division Bench further held that if Rules provide for absorption of an employee on deputation then such an employee has a right to be considered for absorption in accordance with those Rules. By relying on the Judgment of the Supreme Court, the Division Bench held that whether the deputationists should be absorbed in service or not was a policy matter, but, once the recruitment Rules were framed for appointment to a particular post, the Rules have to be respected. The Division Bench found that the service Rules of Rural Development Department has no provision for absorption of employees, who were on deputation and under the method of appointment, there were only two modes viz., one by direct recruitment and the other by transfer of recruitment for certain specified categories. The Division Bench found that the earlier order of absorption was cancelled by

the very same authority on a subsequent occasion and the order of absorption was also made subject to the framing of the ad hoc Rules. The Division Bench was of the opinion that the deputationists have not suffered any service rights in their parent Department due to their deputation and as such, there was no basis for their contention that they have been prejudiced on account of their non-absorption.

(ii) Validity of G.O.Ms.No.102 dated 25.05.1998 :-

80. The contention of the petitioners that there should be a harmonious construction of G.O.Ms.No.102 dated 25.05.1998 and the statutory Rule in G.O.Ms.No.15 dated 25.01.2000 was rejected by the Division Bench by observing that the executive instructions issued in G.O.Ms.No.102 dated 25.05.1998 have become null and void after framing the ad hoc Rules.

(iii) Absence of provision in the statutory Rule for absorption:-

81. The contention regarding absorption in the Rural Development Department was rejected by the Division Bench by holding that when the statutory Rule does not provide for absorption as one of the method of appointment, there could be no right for the deputationists to make a claim for absorption in the said post.

(iv) Claim on the ground of earlier order of absorption :-

82. The Division Bench found that the earlier order of absorption was issued by an incompetent authority and accordingly, it was held that there was no accrued right to the deputationists based on the order dated 17.03.1999, which was passed without jurisdiction.

(v) On deputation :-

83. The Division Bench by placing reliance on the Judgment of the Supreme Court in *Ratilal B. Soni v. State of Gujarat* (1990 (Supp) SCC 243) as well as the later decision of the Supreme Court in *Balakrishna Pandey vs. State of Bihar and others*, (1996 (2) SCC 282), concluded that as the option of the Engineers were neither accepted by the Board nor by the Government, they have no right to claim absorption in the Rural Development Department. In the Judgment cited supra, the Supreme Court held that the appellants being on deputation, they are liable to be reverted to their parent cadre at any time and they do not get any right to be absorbed in the deputation post. In fact, in *Balakrishna Pandey vs. State of Bihar and others*, (1996 (2) SCC 282), the Hon'ble Supreme Court reiterated the legal position that an employee who continues to hold his lien and seniority in the parent Department was not entitled to claim promotion in the borrowing Department.

84. The Judgment of the Supreme Court in *State of Punjab and others vs. Inder Singh and Others* (1997 (8) SCC 372) was also relied on by the Division Bench wherein the Supreme Court had not permitted the claim of absorption where the employees continued in the post and directed to revert those employees to their parent department even though their service was more than 20 years in the borrowing department.

SPECIFIC FINDING :-

85. The following observations made by the Division Bench in the Judgment dated 29.01.2007 in W.P.Nos.19401 to 19410/04 batch clearly shows that all the points now canvassed before us were also canvassed before the Division Bench and the same were answered against the deputationists.

(a) Service Rules of Rural Development Department do not provide for absorption of employees who are on deputation and in fact, under the method of appointment, there are only two modes viz., one by direct recruitment and the other by transfer of service of certain specific categories. [Para 14(4)].

(b) Service Rules have been framed in G.O.Ms. No.15 dated 25.01.2000 with effect from 1997 and as per the service Rules, deputationists cannot claim absorption. Executive instructions issued in

G.O.Ms.No.102 dated 25.05.1998 have become null and void after framing of the ad hoc Rules.
[Para 14 (8)].

(c) In the present case also, though TWAD Board Engineers by interim order continued in the Rural Development Department since 2004, they continued to hold their lien with their parent Department i.e. TWAD Board. Hence cannot claim absorption as a right.
[Para 16-G].

(d) There cannot be a mandamus compelling the Government to absorb the deputationists in the Rural Development Department when they have no vested right to claim absorption.
[Para 16-I].

(e) TWAD Board Engineers retained their lien in TWAD Board and they are only on deputation terms in the Rural Development Department. Hence, the writ petitioners does not acquire any right to be absorbed in the R.D. Department.
[Para 16-J].

(f) First of all, the petitioners/ deputationists have no legal right vested in them so as to invoke the principles of 'legitimate expectation', 'promissory estoppel', etc. and claim absorption as a matter of right. Though the petitioners struggle to substantiate their case by stating that initially there was a proposal for their permanent absorption in the R.D. Department, such position would have definitely stood as a strong factor to take a decision in their favour, had the impugned Rule fell in such lines and brought them under its scope of appointment. Apparently, there was a stipulation that the absorption would be subject to the framing of ad hoc Rules, whereby, it was made clear that their absorption would depend on the provisions inscribed in the Rules to be framed. In other words, the provisional absorption was conditional/ contingent and not absolute. Surprisingly, the petitioners did not question their absorption subject to the framing of ad hoc Rules. Similarly, when they were informed as early as on 02.07.1999 that they cannot at all be absorbed in the R.D. Department, they did not choose to challenge said order. That being so, at this point of time, when Ad hoc Rules have been framed, which do not provide for absorption and make the orders issued on 25.05.1998 as null and void, they cannot at all, in the light of the settled legal position, claim for the relief asked for by them. Further, the petitioners themselves know well that services on contract basis in accordance with Rule-11 of the State and Subordinate Service Rules can be terminated by the Government as and when the need for such services ceases. The petitioners cannot take advantage of the order passed without jurisdiction by the Director, R.D. Department, inasmuch as, admittedly, the Government is the only authority to decide in the matter relating to permanent absorption. It is the well known principle that if an executive instruction is contrary to the statutory/service Rules, the Rules will prevail and not the executive instructions.
[Para 20].

(g) Another aspect of the matter is, by not getting permanent absorption in the R.D. Department, they cannot complain prejudice because the doors of their parent department are not closed for them in view of the continuance of their lien therewith, with all applicable allowances. Thus, in the absence of any statutory Rule, regulation or order, having the force of law, to trace the right and claim of the deputationists for permanent absorption in the R.D. Department, we can not close our eyes to the propounded principles established by the Apex Court, which cover aptly the issue involved, and issue mandamus compelling the Government to absorb the deputationists.
[Para-20].

(h) The prayer of the TWAD Board Engineers to amend the Rules in such a manner as to include the deputationists as one of the methods of appointment cannot be granted by this Court and no Court can interfere with the exclusive discretionary jurisdiction of the State.
[Para 22].

Legal submissions :-

86.Thiru.R.Muthukumarasamy learned Senior Counsel and Thiru.R.Singaravelan, learned Counsel appearing for the petitioners in W.P.Nos.23942/2004, 3162/2004 placed reliance on the decisions of

the Supreme Court in *State of Haryana and ors. v. Piara Singh & ors.* [1992 (4) SCC 118], *Dr.Krushna Chandra Sahu and ors. v. State of Orissa and ors.* [1995 (6) SCC 1], *Dhananjay Malik and ors v. State of Uttaranchal and ors.* [2008 (4) SCC 171] and *Union of India v. H.R.Patankar and ors.* [AIR 1984 SC 1587] in support of their contention that there is no prohibition to issue Government Orders by way of executive instructions to supplement the recruitment Rules. There is no dispute with regard to the said legal position. However, in the present case, subsequent to the issuance of administrative instructions, the statutory Rules were framed and notified by the Government and the benefits conferred on the deputationists in those Government Orders were not made mentioned in the statutory Rules. Therefore, the only possible conclusion is that all the executive instructions have been given a go bye in the statutory Rules. It is not as if after the recruitment Rules were notified, the Government have issued instructions to supplement the recruitment Rules. In fact, the statutory Rules were given retrospective operation to the date of issuance of G.O.Ms.No.102 dated 25.05.1998.

87.Thiru.R.Singaravelan, learned Counsel also relied on the Judgment of the Supreme Court in *T.Shantharam v. State of Karnataka and ors.* [AIR 1995 SC 1123] in support of his contention that uninterrupted service in the Rural Development Department would qualify the petitioner in W.P.No.23942/2004 for absorption in Rural Development Department.

In Shantharam case cited supra, the appellant employee has already been absorbed in the borrowing Department and while determining seniority, it was pointed out that he was mistakenly been deputed to hold higher post in the borrowing department and as such, he was not entitled to be absorbed in the particular post. It was in the said factual context that the Hon'ble Supreme Court observed that it is highly unjust to send the employee back to the post in the parent department which he was entitled to hold and as such, the Tribunal was not right in interfering with the action of the Department in absorbing the deputationist.

However, the issue in the present case is totally different. It is true that G.O.Ms.No.102 dated 25.05.1998 called upon the Rural Development Department to explore the possibility of absorption of the deputationist like the petitioners. It is equally true that they were absorbed originally, but however the said order was cancelled subsequently, and in the interregnum, the statutory Rules were framed. The benefits granted to the petitioners by way of executive instructions were impliedly taken away by framing the statutory Rules wherein, no provision was made for absorption of the deputationists in the Rural Development Department. It is not the length of service in the borrowing Department which would be relevant for absorption. There should be provision in the recruitment Rules for absorption and when the statutory Rule is silent in that aspect, it cannot be inferred that the Rules provide for such absorption, as there is no express prohibition.

88.Thiru.Singaravelan further contended that it is always open to the Court to examine the rationality behind the decision taken by the Government and the Court is entitled to determine as to whether the formation of opinion is arbitrary, capricious or whimsical. In support of his contention, reliance was placed on the Judgment of the Supreme Court in *Bhikubhai Vithlabhai Patel and ors. v. State of Gujarat and anr.* [2008 (4) SCC 144].

In *Bhikubhai Vithlabhai Patel* case, the Supreme Court was considering the provisions of the Gujarat Town Planning and Urban Development Act wherein the State Government was having the power to sanction the draft development plan and the proviso to Sec.17 of the said Act contains a provision for subjective satisfaction of the Government and as per the said provision where the State Government is of the opinion that substantial modifications in the draft development plan are necessary, it would enable the State Government to publish the modifications as considered necessary in the official gazette instead of returning the same to the Area Development Authority. It was only in the said factual context that the Hon'ble Supreme Court observed that formation of an

opinion is a condition precedent for setting the law in motion, proposing substantial modification in the Draft Development plan and there must be material on the basis of which alone, the State Government could form its opinion.

89.The decision of the Supreme Court in Bhikubhai Vitthalbhai Patel and ors. v. State of Gujarat and anr. [2008 (4) SCC 144] was relied on by the learned Counsel for the purpose of exercising our jurisdiction for judicial review in respect of the recruitment Rules framed under Art.309 of the Constitution of India. The statutory Rules notified as G.O.Ms.No.15 dated 25.01.2000 is admittedly made in exercise of legislative function. Therefore, it is not within our jurisdiction to modify the Rule in the manner suggested by the learned Counsel. There is no ambiguity in the statutory Rules notified by the Government. Source of recruitment was clearly spelt out in the Rules as well as the qualification for the employees for such appointment. There is no alternative mode of appointment suggested in the recruitment Rule so as to consider the case of the employees like the petitioners.

90.This Court exercising judicial review is concerned only with the decision making process and when it is established that the impugned Rules were framed in accordance with the constitutional scheme, our interference is very limited unless it is shown that the Rules are in flagrant violation of the provisions of the constitution.

91.The statutory Rules though framed in the year 2000, was given retrospective operation and except for the post of Assistant Engineer, the Rules regarding all other posts were made effective from 25th May, 1998. The Government Order relied on by the petitioners in support of their case for absorption was also issued by the Government on 25.05.1998 and by giving retrospective effect to the statutory Rules, the Government have in fact superseded the administrative instructions and the same is also evident from the subsequent clarifications issued by the Government as well as from the Order issued by the Government in G.O.Ms.No.572 dated 17.11.2005 which is challenged in W.P.No.3162/2006. It is open to the Government to give retrospective operation to the statutory Rules and in fact, the said issue was also considered by the Division Bench in the earlier round of litigation involving TWAD Engineers and the issue regarding retrospectivity was answered by the Division Bench by holding that the retrospective operation of the statutory Rule as notified in G.O.Ms.No.15 dated 25.01.2000 was perfectly valid.

Legal position.

Deputationists :-

92.In Kunal Nanda v. Union of India, [2000 (5) SCC 362], the concept of deputation was considered by the Hon'ble Supreme Court and it was held that deputationist has no right to continue on deputation and to make a claim for permanent absorption in the borrowing department unless his permanent absorption was covered by a statutory provision. The Hon'ble Supreme Court further observed thus :-

"It is well settled that unless the claim of the deputationist for a permanent absorption in the department where he works on deputation is based upon any statutory Rule, regulation or order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation."

93.The issue before the Hon'ble Supreme Court in Ratilal B. Soni v. State of Gujarat, 1990 (Supp) SCC 243, was in respect of the right of deputationists who have given their option for absorption to remain in the service where they were deputed. In the said case, the appellants were appointed

originally as Talatis in the Revenue Department in the State of Gujarat. Subsequently, the Panchayat Service was constituted in accordance with the Gujarat Panchayat Act and all the post of Talatis along with the incumbents were transferred to the Panchayat Service. The appellants were only on deputation as Circle Inspectors in the State Service and by that time, qualified officials became available for promotion in the post of Circle Inspectors in the State cadre and as a result, the appellants were reverted to their parent cadre of Talatis in the Panchayat Service. The said order of reversion was challenged by the appellants mainly on the ground that their option for absorption in the State Service was pending with the State Government and as such, the State Government was bound to decide in their favour. The writ petition was dismissed also on the ground that the appellants being on deputation, have no legal right to be absorbed in the State Service. It was the said order which was challenged before the Supreme court and the Hon'ble Supreme Court concurred with the views of the High Court and in the said factual context, observed thus :-

"5.The appellants being on deputation they could be reverted to their parent cadre at any time and they do not get any right to be absorbed on the deputation post."

94.In *G.Muniyappa Naidu v. State of Karnataka and ors.* [1976 (4) SCC 543], the issue before the Hon'ble Supreme court was similar to the one in the present case and the main dispute was as to whether the State Government employees on deputation to the municipal Corporation were entitled for absorption in the service of the Corporation, contrary to the statutory regulations even though sanction was given by the Government for such absorption.

The appellants in *G.Muniappa Naidu* case [1976 (4) SCC 543] were Health Inspectors in the Karnataka State Civil Service and prior to the coming into force of the City of Bangalore Municipal Corporation Services (General) Cadre and Recruitment Regulations, 1971, the practice of the City of Bangalore Municipal Corporation was to have one half of the cadre of Senior Health Inspectors manned by deputation of Senior Health inspectors from the Karnataka State Civil Service and the appellants were also taken on deputation by the Corporation in the same manner. While they were working as Senior Health Inspectors on deputation, the Corporation passed a resolution on 30.12.1974, approving the report of the Commissioner that sixteen Senior Health Inspectors including the appellants who were working under the Corporation on deputation should "be absorbed in the interest of work if they are willing on their own pay and accept their seniority as juniors to the Senior Health Inspectors of the Corporation". It appears that after passing the said resolution, they have addressed a communication to the Mayor of the Corporation intimating that they were willing to be absorbed as Senior Health Inspector under the Corporation as per the terms and conditions fixed by the Corporation. The resolution passed by the Corporation was sent to the Government for according its sanction and the State Government also as per order dated 06.05.1975 accorded sanction to the resolution with regard to the absorption of the Senior Health Inspectors. In the meantime, the term of the Corporation came to an end and since fresh elections were not held to elect the members of the Corporation, an administrator was appointed by the Government to manage the affairs of the Corporation. The administrator requested the State Government to defer the implementation of the proposal contained in the resolution of the Corporation since the permanent employees of the Corporation were agitated against such proposal as it prejudicially affected their chances of promotion by reason of absorption of the deputationists. Accordingly, the State Government has withdrawn the sanction accorded earlier. The said order was challenged by the deputationists mainly on the ground that since the State Government accorded sanction to the resolution, they were absorbed as permanent employees of the Corporation and they ceased to be in State Government service and the State Government thereafter do not have authority to withdraw the sanction. The challenge was negatived by the learned Single Judge as well as the Division Bench and the same was challenged before the Supreme Court.

The Supreme Court while concurring with the views of the High Court found that until the cadre and recruitment regulations were amended, it would not be competent to the Corporation to absorb the

deputationists as permanent Senior Health Inspectors on the establishment of the Corporation. The Supreme Court found that the Cadre and Recruitment Regulations recognized only two modes of recruitment to the post of Senior Health Inspectors viz., promotion from the cadre of junior Health Inspectors and deputation from the State Directorate of Health Services and one half of the cadre was to be drawn from each of these two sources. Therefore, the Supreme Court was of the view that in the face of statutory provisions, the post of Health Inspectors could not be filled by absorption of deputationists from the Karnataka State Civil Service. Finally, the appeal was rejected by holding that the deputationists are not entitled to be absorbed as permanent Senior Health Inspectors under the Corporation unless and until the cadre of recruitment regulations were amended so as to permit such absorption.

In the case on hand also, the situation is not different. The recruitment Rules framed under Article 309 of the Constitution of India as per G.O.Ms.No.15 dated 25.01.2000 do not make provision for absorption of the deputationists and in the face of the said statutory Rule, it is not permissible for the deputationists to contend that they are entitled to be absorbed in the Rural Development Department by virtue of their continuous service as deputationists and on account of the earlier executive instructions issued by the Government.

95. In *Mukesh Kumar K. Parmar and ors. v. S.I.G. Of Police and ors.* [2002 (9) SCC 485], the issue before the Supreme Court was again with respect to absorption of deputationists in view of their long continuous service in the borrowing Department.

In the *Mukesh Kumar K. Parmar* case, the petitioners were Head Constables in the Gujarat Police Service and consequent to the decision of the Government to form a separate wing to be named as Intelligence Bureau, they have all been deputed to the said Bureau in 1991. There was an indication in the said scheme that Recruitment Rules will be separately framed for the re-designated post, incorporating inter-alia, the method of recruitment. As per the said Rule, it was stipulated that the posts in the bureau would be manned by direct selection or by transfer of a person amongst the persons working in the cadre of Head Constables, Grade I or Grade II of the Gujarat Subordinate Service. The Rules also made provision for test to be held for selecting people to be brought on transfer from Gujarat Police to the Intelligence Bureau. The deputationists were permitted to continue in the Intelligence Bureau even after the enforcement of the Rules till the year 1999 and when they were repatriated to their parent organization, they have challenged the said decision on the ground that in accordance with the Rules framed by the bureau, they could be brought into the Intelligence Bureau by way of transfer and since they have already rendered sufficient number of service in the Bureau from 1991 and till their repatriation, they should be held to have acquired a right to be permanently absorbed in the Bureau or at least a legitimate expectation to be absorbed. The said contention was not accepted by the High Court. Before the Supreme Court also the deputationists contended that instead of sending back to their parent organization on expiry of the period of deputation, and that too after the enforcement of the Rules and passing necessary test in the bureau, the deputationist had the legitimate expectation to be absorbed in the bureau and as such, prayed for a mandamus to the State Government for their permanent absorption in the bureau.

The Hon'ble Supreme Court on a consideration of the matter held that there was no enforceable right with the deputationists for being permanently absorbed and the Hon'ble Supreme Court was of the opinion that no mandamus could be issued to absorb the deputationists permanently and left the matter to the State Government to take appropriate decision.

The facts of the above case is also more or less identical to the present one inasmuch as it was the contention of the petitioners that they have been working in the Rural Development Department continuously and option has also been taken by the Government earlier for their absorption in the Rural Development Department and as such, they got a legitimate expectation that they would be

absorbed in the Rural Development Department.

96. In *Union of India v. S.N. Panikar* [2001 (10) SCC 520], the challenge was to the order passed by the Central Administrative Tribunal directing the Union Government to absorb the deputationist in the post of Deputy Director with effect from the date on which the last period of deputation formally came to an end.

In *S.N. Panikar* case, the recruitment Rule framed under Article 309 of the Constitution of India provided that the post of Deputy Director (Development) could be filled up only by direct recruitment. The said recruitment Rule conferred power of relaxation on the Central Government and such relaxation has to be given for reasons recorded in writing in consultation with the Union Public Service Commission [UPSC, for short]. The respondent who was serving in the Department was sent on deputation after due consultation with UPSC in exercise of power of relaxation. However, after the period of deputation was over, the Department requested the UPSC for further continuance of the respondent on deputation and the same was negated by the UPSC and the factum of such decision was communicated to the Government of India. The issue was taken up by the employee before the Administrative Tribunal and the Tribunal was of the opinion that the deputation itself having been made by the Union Government in consultation with UPSC and in relaxation of the provisions of the Recruitment Rules providing for direct recruitment, the deputationist must be held to have a right to hold the post according to the terms and conditions of appointment. When the matter was taken up in appeal, the Hon'ble Supreme Court on a consideration of the recruitment Rule framed under Article 309 of the Constitution of India and the terms and conditions of the order of deputation, held that the decision of the Tribunal was contrary to service jurisprudence and the relevant Rules under which the respondent was sent on deputation. The Hon'ble Supreme Court further held that a deputationist cannot claim a right to the post in question or he can claim absorption on permanent basis to the post. It was further held that the Rules framed under Article 309 of the Constitution of India having specifically indicated that the post of Deputy Director could be filled up only by way of direct recruitment and the relaxation obtained in the case being only for the purpose of filling up the post, no right can be claimed by the deputationist to the said post and accordingly, the direction of the Tribunal to absorb the employee in the borrowing Department was set aside.

Government Order - Whether a substitute for recruitment Rule under Article 309 ?

97. The Hon'ble Supreme Court *Rajinder Singh (Dr) v. State of Punjab*, (2001) 5 SCC 482, held that the Government Orders or notifications can never be a substitute for the statutory Rules framed with the authority of law and made the legal position thus :-

"7. The settled position of law is that no government order, notification or circular can be a substitute of the statutory Rules framed with the authority of law. Following any other course would be disastrous inasmuch as it would deprive the security of tenure and right of equality conferred upon the civil servants under the constitutional scheme. It would be negating the so far accepted service jurisprudence. We are of the firm view that the High Court was not justified in observing that even without the amendment of the Rules, Class II of the service can be treated as Class I only by way of notification. Following such a course in effect amounts to amending the Rules by a government order and ignoring the mandate of Article 309 of the Constitution."

Appointment/Creation of post/Promotion :: Government function :-

98. In *P.U. Joshi v. Accountant General*, (2003) 2 SCC 632, the Hon'ble Supreme Court held that the creation of post, classification, amalgamation of post etc. are all Governmental function and observed thus :-

"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/ abolition, prescription of qualifications and other conditions of service including avenues of promotions and

criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the Rules relating to a service and alter or amend and vary by addition /subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate Rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/ categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that Rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new Rules relating to even an existing service."

99.The Hon'ble Supreme Court in Union of India v. Pushpa Rani & ors. [2008 (9) SCC 242] reiterated the settled legal position with respect to the power of Government in the matter of creation and abolition of post and other areas in service jurisprudence and observed thus :-

"37.Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The Court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open the Court to make comparative evaluation of the merit of the candidates. The Court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration."

100.For the reasons aforesaid, we do not find any merit in the contention of the petitioners and accordingly, the Writ Petitions are dismissed. W.P.M.P.No.1126/2008 in W.P.No.24453/2004 is allowed and other miscellaneous Petitions are also dismissed. In the facts and circumstances of the case, there is no order as to costs.

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To

1.The Secretary,

Rural Development (CSS.I) Department,
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2.The Director of Rural Development,
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